



## CHAPTER li.

An Act to confirm a Provisional Order under the Public Health (Scotland) Act, 1867, relating to Denny and Dunipace Water. A.D. 1888.  
[28th June 1888.]

**W**HEREAS Her Majesty's Secretary for Scotland has made the Provisional Order set forth in the schedule hereunto annexed under the provisions of the Public Health (Scotland) Act, 1867: 30 & 31 Vict. c. 101.

And whereas it is necessary that the said Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Order set out in the schedule hereto annexed shall be and the same is hereby confirmed. Order in schedule confirmed.

2. This Act may be cited as the Denny and Dunipace Water Supply Confirmation Act, 1888. Short title.

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## SCHEDULE.

### DENNY AND DUNIPACE WATER SUPPLY.

PUBLIC HEALTH (SCOTLAND) ACT, 1867 (30 &amp; 31 Vict. c. 101).

#### PROVISIONAL ORDER.

WHEREAS by the Public Health (Scotland) Act, 1867, it is, inter alia, enacted, section eighty-nine, that, with respect to the improvement of burghs having a population of less than ten thousand according to the census last taken, and not having a local Act for police purposes, “the local authority, if they  
“ think it expedient so to do, may acquire and provide or arrange for a supply  
“ of water for the domestic use of the inhabitants, and for that purpose may  
“ conduct water from any lake, river, or stream, may dig wells, make and  
“ maintain reservoirs, may purchase, take upon lease, hire, construct, lay down,  
“ and maintain such waterworks, pipes and premises, and do and execute all  
“ such works, matters and things as shall be necessary and proper for the  
“ aforesaid purpose, and may themselves furnish a supply of water, or contract  
“ or arrange with any other person to furnish the same; and for the purposes  
“ aforesaid the local authority shall be held to have all the powers and rights  
“ given to promoters of undertakings by the Lands Clauses Acts: Provided  
“ always, that they shall make reasonable compensation for the water so taken  
“ by them, and for the damage which may be done to any lands by reason of the  
“ exercise of the powers hereby conferred, in terms of the said Acts”:

And whereas it is further provided by the said Act, section ninety, that upon compliance with the provisions therein contained with respect to advertisements and notices, the local authority may present to one of Her Majesty's Principal Secretaries of State a petition stating the land intended to be taken and the purposes for which it is required, and the names of the owners, lessees and occupiers of lands who have assented, dissented or are neuter in respect of the taking of such land, or who have returned no answer to the notice, and praying that the local authority may, with reference to such land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and that upon the receipt of such petition, and proof of the proper advertisements having been published and notices served, the Secretary of State may direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; and after the completion of such inquiry, the Secretary of State may, by Provisional Order, empower the local authority to put in force, with reference to the land referred to in such Order, the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them:

And whereas by the Secretary for Scotland Act, 1885, all powers and duties vested or imposed on the said Secretary of State by the Public Health (Scotland)



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Act, 1867, and Acts amending the same, were transferred to, vested in and imposed on the Secretary for Scotland :

And whereas the Police Commissioners of the burgh of Denny and Dunipace, in the parishes of Denny and Dunipace, and county of Stirling, acting under the General Police and Improvement (Scotland) Act, 1862, which is in force within the said burgh, are the local authority within the said burgh under the said Public Health (Scotland) Act, 1867 (who are herein-after called "the Commissioners"), and which burgh contains less than ten thousand inhabitants, and has no local Act for police purposes :

And whereas a petition under the provisions of the Public Health (Scotland) Act, 1867, and the Public Health (Scotland) Amendment Act, 1871, and the Public Health (Scotland) Act (1867) Amendment Act, 1882, has been presented to me, as Secretary for Scotland, by the Commissioners, as the local authority aforesaid, setting forth, among other things, that the population of the said burgh of Denny and Dunipace is about four thousand and fifty, and that the supply of water to the said burgh is insufficient, and that it would be of great advantage to the inhabitants of the said burgh if the petitioners were authorised to obtain a supply of water for the domestic use of the said inhabitants, and for trading and manufacturing and other purposes, under the provisions of the first-recited Act ; and that the petitioners proposed to construct works for the purpose of affording such supply of water, and to purchase and take, under the powers and provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, which Acts are herein termed and referred to as "the Lands Clauses Acts," the lands and water required for the purposes of the said water supply and the said works, all which lands, water and works are or will be situate in the said parish of Denny and county of Stirling, and that the petitioners had published the advertisements and deposited the plans, sections and book of reference, and served the notices required by the ninetieth section of the first-recited Act ; and the said petition prayed that a Provisional Order might be made, empowering the petitioners to put in force, with reference to the lands and water before mentioned, the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement :

And whereas due inquiry having been directed and held in respect of the matters mentioned in the said petition, I have resolved to grant the prayer thereof ; and a plan, as modified, describing the works to be constructed and the lands and water intended to be taken for the purposes thereof and of the said water supply, and a book of reference to such plan, containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands and water, have been signed by me with reference to this Order, and will be deposited with the sheriff clerk of the county of Stirling, at his office in Stirling :

Now, therefore, in pursuance of the powers contained in the Public Health (Scotland) Act, 1867, and transferred to and vested in me by the Secretary for Scotland Act, 1885, I, as Secretary for Scotland, do by this Provisional Order under my hand direct that from and after the passing of any Act of Parliament confirming the same,—

1. The expression "the special Act" in the Lands Clauses Acts shall mean and include this Order ; and the expression "the promoters of the undertaking"

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2. The Commissioners may put in force, with reference to the lands and water described on the said plan and in the said book of reference, the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

3. The Commissioners, in constructing the works described on the said plan, may deviate laterally from the lines laid down thereon to any extent not exceeding the limits of lateral deviation shown thereon; and may deviate vertically from the levels of the said works, as defined on the sections, to any extent not exceeding five feet upwards and five feet downwards: Provided always, that they shall not in the exercise of the power of lateral deviation hereby given construct any embankment or retaining wall of the reservoir hereby authorised of a greater height above the general surface of the ground than that shown on the deposited plans, and five feet in addition: Provided also, that if they shall exercise the powers of vertical deviation hereby granted, they shall construct such embankment of such additional thickness at the base as shall be equal to five feet for every foot of additional height, and shall make a corresponding addition to the strength of any retaining wall: Provided also, that they may erect any water tower, stand pipe, or other light work of any height which for the time being may be necessary or proper for the purposes of this Order.

4. The Commissioners may, in the execution of their works, take way-leaves, easements, servitudes, or other limited rights over lands and other property, subject to such conditions as may be agreed on with the persons interested.

5. The Commissioners shall, as soon as the waterworks described on the said plan are completed so far as to be able to afford the supply of compensation water herein-after mentioned, cause to be discharged from the reservoir, to be formed at or near the stream known as the Overton Burn, down the said stream, or a tributary thereof within the limits of deviation shown on the plan, to be made and kept by the Commissioners of sufficient capacity and otherwise fit to convey the same, a regular and continuous flow of water of not less than 60,000 gallons in every day of twenty-four hours; and whether the said waterworks are completed to the extent aforesaid or not, the Commissioners shall not be entitled to impound, withdraw or appropriate any of the water which they are authorised by this Order to do, unless they shall cause to be discharged, and if and while they do not cause to be discharged as aforesaid, the regular and continuous flow foresaid.

6. The Commissioners shall construct, and for ever thereafter maintain, a suitable measuring gauge or gauges over or through which the said quantity of compensation water shall flow or be delivered; and the outlets by which the water to be used for domestic and other purposes under this Order, and the compensation water mentioned in the preceding section are respectively to be discharged from said reservoir, shall be so constructed, placed and for ever maintained, as that no water shall pass into or through the said outlet for domestic



and other purposes unless the full quantity of compensation water, mentioned in the preceding section, is flowing, and if and while such full quantity is not flowing through, by or over the said outlet by which the compensation water is to be discharged; and the said gauge or gauges and outlets, and works relative thereto, shall at all times be open to be inspected, examined and tested by all persons interested in the flow of the water of said Overton Burn, and their respective agents, and others representing them. A.D. 1888.

7. If at any time any of such gauges, outlets or relative works be out of repair or in an unfit condition for the purposes for which they are intended, the Commissioners shall forthwith put the same in fit repair and condition, and if they fail to do so within seven days after notice in writing to that effect, given to the clerk to the Commissioners by or on behalf of any of the persons interested in the flow of the water of said Overton Burn, then any such person may cause the same to be put in fit repair and condition, and the cost of so doing shall be a debt owing by the Commissioners to such person.

8. If any difference arise between the Commissioners and any of the persons interested in the flow of the water of said Overton Burn, with respect to the construction or use of the said gauge or gauges, or outlets and works relative thereto, or of any part thereof, such difference shall be settled and determined by an engineer to be nominated (unless otherwise agreed on between the parties in difference) on the application of either party, after seven days notice in writing to the other of them, by the sheriff of the county of Stirling, and the costs of and incident to such reference shall be borne as the arbiter shall direct.

9. If and while the Commissioners cause to be discharged as aforesaid from said reservoir the aforesaid quantity of compensation water, and comply with the provisions of sections 5, 6 and 7 of this Order, their so doing shall be deemed to be full compensation to all persons interested in the flow of the water of said Overton Burn, for the water intercepted or appropriated for the purposes of this Order.

10. For the protection of the county road trustees of the county of Stirling (in this section called "the road trustees") the following provisions shall have effect:—

- (1.) The clauses and provisions of the Waterworks Clauses Act, 1847, with respect to the breaking up of streets for the purpose of laying pipes, shall extend and apply to the opening and breaking up by the Commissioners of any public roads, highways, footways or bridges within the jurisdiction of the road trustees, and also to the laying down and placing of pipes, conduits and other works in, under and along the said roads, highways, footways and bridges respectively;
- (2.) No greater length than one hundred and fifty yards of any road or highway shall be broken up at any one place at one time, without the consent of the road trustees. A clear and sufficient carriageway shall, if practicable, be kept for the passage of carriages and traffic along every road, highway and bridge during any interference therewith by the Commissioners; and in case of default in compliance with this provision, the road trustees may,

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by their own servants and workmen, clear any such carriageway, and may recover the expenses of and incident thereto from the Commissioners;

(3.) Nothing in this Act shall interfere with the right of the road trustees to alter the level, or deviate or improve in any manner they think fit, any road or highway in or across which any pipe of the Commissioners shall be laid, and the Commissioners shall forthwith, on receiving notice in writing under the hand of the clerk to the road trustees so to do, alter the position of the said pipes in such manner and to the extent prescribed by such notice ;

(4.) If any difference arise between the road trustees and the Commissioners touching this section, or anything to be done or not to be done thereunder, such difference shall be determined by a summary application to the sheriff by either party, and the decision of the sheriff shall be binding and conclusive on all parties, and the costs shall be in the discretion of the sheriff.

11. The Commissioners shall not, under the powers of this Order, without the consent of the Secretary for Scotland, purchase or acquire in any district within the meaning of the Public Health (Scotland) Act, 1867, ten or more houses which, after the passing of the Act confirming this Order, have been, or on the fifteenth day of December last were, occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers.

For the purposes of this section the expression "labouring class" includes mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them.

Given under my hand and seal at Whitehall, this twenty-first day of April one thousand eight hundred and eighty-eight.

LOTHIAN.

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